

Volume 42 | Issue 2

---

1992

## Volume 42 Issue 2 (1992)

Case Western Reserve University Law Review

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>



Part of the [Law Commons](#)

---

### Recommended Citation

Case Western Reserve University Law Review, *Volume 42 Issue 2 (1992)*, 42(2) Case W. Res. L. Rev. Front Matter (1992)  
Available at: <https://scholarlycommons.law.case.edu/caselrev/vol42/iss2/2>

This Front Matter is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

# CASE WESTERN RESERVE



## LAW REVIEW

### ARTICLES

Federal Income Taxation of Punitive  
Damages Awarded in Personal  
Injury Actions

*Paul C. Feinberg*

Practical Reason: The Commercial  
Speech Paradigm

*Edward J. Eberle*

### NOTES

Federal Election Regulation and the  
States: An Analysis of the  
Minnesota and New Hampshire  
Attempts to Regulate Congressional  
Elections

*Lisa Babish Forbes*

A Paper Tiger: Lawsuits Against  
Doctors for Non-Disclosure of  
Economic Interests in Patients'  
Cells, Tissues and Organs

*Anne T. Corrigan*

Predictability in Merger Enforcement  
After *California v. American Stores*:  
Current Uncertainties and a Proposal  
for Change

*Wayne H. Elowe*

### COMMENTS

*Jones v. Murray*: Allowing the  
Government to Get Blood From a  
Stone

*Michael W. Kier*

*Rodriguez de Quijas v. Shearson/*  
*American Express, Inc. and Lampf,*  
*Pleva, Lipkind, Prupis & Petigrow*  
*v. Gilbertson*: Blurring the  
Distinctions Between the Securities  
Acts and Among Securities Claims

*Laurie F. Humphrey*

# CASE WESTERN RESERVE UNIVERSITY LAW SCHOOL FACULTY

## *Administrative Officers*

PETER M. GERHART, B.A., J.D., *Dean*  
DANIEL T. CLANCY, B.S., LL.B., *Associate Dean for External Affairs*  
CALVIN WILLIAM SHARPE, B.A., J.D., *Associate Dean for Academic Affairs*  
JOANNE U. JACKSON, B.A., J.D., *Associate Dean for Students and Post J.D. Programs*  
BARBARA F. ANDELMAN, B.A., J.D., *Assistant Dean for Admissions and Financial Aid*

## *Professors Emeriti*

LINDSEY COWEN, B.A., J.D., LL.M., *Dean Emeritus*  
SIMON L. GOREN, Dip. Law, M.L.S.  
HUGH A. ROSS, B.S., LL.B., LL.M., S.J.D.  
OLIVER C. SCHROEDER, JR., A.B., J.D., *Albert J. Weatherhead III and Richard W. Weatherhead Professor Emeritus of Law and Criminal Justice*  
LOUIS A. TOEPFER, A.B., LL.B., *Dean Emeritus, President Emeritus of the University*

## *Professors of Law*

ARTHUR D. AUSTIN II, B.S., LL.B. <i>Edgar A. Hahn Professor of Jurisprudence</i>	HENRY T. KING, JR., B.A., LL.B. <i>U.S. Director, Canada-U.S. Law Institute</i>
LAURA BROWN CHISOLM, B.A., J.D.	GERALD KORNGOLD, B.A., J.D.
RONALD J. COFFEY, A.B., LL.B., LL.M.	JULIET P. KOSTRITSKY, A.B., J.D.
GEORGE W. DENT, B.A., J.D., LL.M.	ROBERT P. LAWRY, B.A., J.D., Dip. Law
REBECCA SUSAN DRESSER, B.A., M.S., J.D.	WILBUR C. LEATHERBERRY A.B., J.D.
MELVYN R. DURCHSLAG, B.S., J.D.	WILLIAM P. MARSHALL, B.A., J.D.
JONATHAN L. ENTIN, A.B., J.D.	<i>Galen J. Roush Professor of Law</i>
LEON GABINET, Ph.B., J.D. <i>David L. Brennan Professor of Law</i>	JAMES W. MCELHANEY, A.B., LL.B. <i>Joseph C. Hostetler Professor of Trial Practice and Advocacy</i>
PETER M. GERHART, B.A., J.D.	EDWARD A. MEARNES, JR., B.S., LL.B.
PAUL C. GIANNELLI, B.A., M.S.F.S., J.D., LL.M. <i>Albert J. Weatherhead III and Richard W. Weatherhead Professor of Law and Criminal Justice</i>	MAXWELL J. MEHLMAN, B.A., J.D.
ERIK M. JENSEN, S.B., M.A., J.D.	KAREN NELSON MOORE, A.B., J.D.
PETER D. JUNGER, A.B., LL.B.	SPENCER NETH, A.B., J.D., LL.M.
LEWIS R. KATZ, A.B., J.D. <i>John C. Hutchins Professor of Law</i>	SIDNEY I. PICKER, JR., A.B., LL.B., LL.M. <i>Executive Director, Gund Foundation International Law Center</i>
	MORRIS G. SHANKER, B.S.E.E., M.B.A., J.D. <i>John Homer Kapp Professor of Law</i>
	CALVIN WILLIAM SHARPE, B.A., J.D.

## *Associate Professors of Law*

KATHLEEN CARRICK, B.A., M.L.S., J.D., *Librarian*  
MICHAEL C. GROSSBERG, B.A., Ph.D., *Associate Professor of History and Law*  
KEVIN C. MCMUNIGAL, B.A., J.D.  
RICHARD S. MYERS, B.A., J.D.

## *Assistant Professors of Law*

PETER A. JOY, A.B., J.D.  
JENNIFER M. RUSSELL, B.A., J.D.  
ROBERT N. STRASSFELD, B.A., M.A., J.D.

## *Instructors of Law*

JONATHAN GORDON, B.A., J.D.	LOUISE W. MCKINNEY, B.A., J.D.
MARY KATHERINE KANTZ, A.B., J.D.	KATHRYN SORDS MERCER, A.B., M.S.S.W., J.D.
JUDITH P. LIPTON, B.A., M.S.S.W., J.D.	JANE I. ROLNICK, B.A., J.D.
KENNETH R. MARGOLIS, B.A., J.D.	VIRGINIA WALLACE-CURRY, B.B.A., M.B.A., J.D.

# Case Western Reserve Law Review

---

Volume 42

1992

Number 1

---

*Editor in Chief*

Candace M. Jones

*Managing Editor*

Michael W. Kelly

*Business Manager*

Jeffrey C. Schwarz

*Articles Editors*

Constance M. Greaney  
Robert S. Faxon  
Susan R. Gornik  
George E. Hamm, Jr.  
Jane E. Penttila  
Mary B. Percifull  
Michael C. Protos  
H. William Smith III  
Victoria L. Wendling

*Contributing Editors*

Michael W. Kier  
Laurie F. Humphrey  
Timothy M. Tesluk

*Notes Editors*

Lisa Babish Forbes  
Sharon J. Badertscher  
Anne T. Corrigan  
Wayne H. Elowe  
L. John Matthews  
Michelle M. Pepin  
Karen D. Pfister  
Richard J. Rudolph  
Eileen M. Scanlon

*Associates*

Anne L. Austin  
Thaddeus M.S. Bereday  
Steven B. Berger  
Deborah M. Brown  
Mary A. Cavanaugh  
Dominique D.Y. Cone  
M. Kristine Creagan  
Suzanne F. Day  
Jill M. Dickey  
Cynthia J. Dollar  
LaVonne R. Dye  
Halle S. Fine

Randy M. Fogle  
Michael C. Griffaton  
Jeffrey D. Hickman  
Scott E. Jordan  
Lisa A. Kainec  
Anthony C. Kaye  
Ramon A. Madrigal III  
Kathleen Susanne Mara  
Kimberly M. Mack  
Brian P. Miller  
Ross I. Molho  
John M. Saada

Fred Seleman  
Thomas R. Simmons  
Marilyn Weaver Sonnie  
Heather E. Sprintz  
Roberta L. Steele  
Debbie Sternweiler Steiger  
Jennifer R. Treadway  
James A. Vollins  
Susan J. Williams  
Alan C. Yarcusko  
Martha M. Young  
Andrew A. Zashin

*Faculty Advisor*

Erik M. Jensen

*Manuscript Secretary*

Debbie Korenchan

# Case Western Reserve Law Review

---

Volume 42

1992

Number 2

---

*Copyright © by Case Western Reserve Law Review*

## Contents

### ARTICLES

- Federal Income Taxation of Punitive Damages  
Awarded in Personal Injury Actions  
*Paul C. Feinberg* . . . . . 339
- Practical Reason: The Commercial Speech Paradigm  
*Edward J. Eberle* . . . . . 411

### NOTES

- Federal Election Regulation and the States: An  
Analysis of the Minnesota and New  
Hampshire Attempts to Regulate  
Congressional Elections  
*Lisa Babish Forbes* . . . . . 509
- A Paper Tiger: Lawsuits Against Doctors for Non-  
Disclosure of Economic Interests in Patients'  
Cells, Tissues and Organs  
*Anne T. Corrigan* . . . . . 565
- Predictability in Merger Enforcement After *California*  
*v. American Stores*: Current Uncertainties  
and a Proposal for Change  
*Wayne H. Elowe* . . . . . 599

### COMMENTS

- Jones v. Murray*: Allowing the Government to Get  
Blood From a Stone  
*Michael W. Kier* . . . . . 635
- Rodriguez de Quijas v. Shearson/ American Express,*  
*Inc. and Lampf, Pleva, Lipkind, Prupis &*  
*Petigrow v. Gilbertson*: Blurring the  
Distinctions Between the Securities Acts and  
Among Securities Claims  
*Laurie F. Humphrey* . . . . . 659

---

---

The CASE WESTERN RESERVE LAW REVIEW (ISSN 0008-7262), formerly the Western Reserve Law Review, is published quarterly by the students of the Case Western Reserve School of Law. Second class postage paid at Cleveland, Ohio, and additional mailing offices.

Editorial and business offices are located at Case Western Reserve University, 11075 East Boulevard, Cleveland, Ohio 44106, telephone (216) 368-3312. The submission of unsolicited manuscripts is invited.

Subscriptions are entered for the entire volume for only \$20.00 per year (\$24.00 for foreign subscriptions). Subscriptions are automatically renewable and any correspondence regarding this should be sent to the Business Manager. Students may subscribe at a discount price of \$16.00 per year.

Single issues of the current volume are available for \$7.00 each. Special and Symposium issues are specially priced. Back issues from earlier volumes are available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, New York 14209.

The Review is a member of the National Conference of Law Reviews. Citations conform to *A Uniform System of Citations* (15th ed. 1991), copyright by the *Columbia Law Review*, the *Harvard Law Review*, the *University of Pennsylvania Law Review*, and *The Yale Law Journal*. Style conforms generally to THE CHICAGO MANUAL OF STYLE (13th ed. 1982).

The *Case Western Reserve Law Review* grants permission for each article in this volume to be copied for use by nonprofit educational institutions, provided that 1) copies are distributed at or below cost, 2) the author and the *Review* are identified, and 3) proper notice of copyright is affixed to each copy.

This issue went to press in July 1992.

\* Cover Design by Susan Abramson and John Donovan